

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

IN RE:)	Chapter 11
)	
ORION REFINING CORPORATION,)	Case No. 03-11483 (MFW)
)	
Debtor.)	
)	
FLUOR ENTERPRISES, INC.,)	
)	Adv. Proc. No. 04-52447 (MFW)
Plaintiff,)	
v.)	
)	[Parallel Contested Matter under Fed. R.
ORION REFINING CORPORATION,)	Bankr. P. 9024 and Fed R. Bankr. P. 60(b)]
CYPRESS ASSOCIATES, LLC as ORC)	
DISTRIBUTION TRUST REPRESENTATIVE,)	
)	
Defendant.)	
)	Re: Adv. D.I. 138 & 139
ORION REFINING CORPORATION,)	Bankr. D.I. 1913 & 1914
)	
Counter-Claimant,)	
)	
v.)	
)	
FLUOR ENTERPRISES, INC.,)	
)	
Counter-Defendant.)	
)	

**STATEMENT OF APPELLANT CYPRESS ASSOCIATES, LLC, AS THE
ORC DISTRIBUTION TRUST REPRESENTATIVE, CONCERNING
TIMING OF FILING AND SERVICE OF ITS DESIGNATION OF THE
ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL AND
STATEMENT OF THE ISSUES TO BE PRESENTED**

Appellant Cypress Associates, LLC, as the ORC Distribution Trust Representative, successor-in-interest to Orion Refining Corporation (the “ORC Representative”), by its undersigned attorneys, respectfully states as follows with respect to the timing of filing and service of its designation of the items to be included in the record on appeal and its statement of the issues to be presented on appeal (the “Appeal Designations And Issues Statement”), pursuant

to Rule 8006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Rule 8006-1 of the Local Rules of Bankruptcy Practice and Procedure for the United States Bankruptcy Court for the District of Delaware:

1. On July 30, 2007, the ORC Representative filed the Motion Of Cypress Associates, LLC, As ORC Distribution Trust Representative, For An Order (I) Granting Reconsideration, In Part, Of The Court's Findings Of Fact, Opinion And Order, Each Dated July 20, 2007, And (II) Upon Reconsideration, (A) Vacating That Portion Of The Opinion And Order Authorizing Fluor Enterprises, Inc. To Recover Pre-Judgment Interest And (B) Granting Related Relief (Adv. D.I. 138; Bankr. D.I. 1913) (the “Reconsideration Motion”) in the above-captioned adversary proceeding (the “Adversary Proceeding”) and in the related contested matter (the “Contested Matter”). The Reconsideration Motion requests, pursuant to Bankruptcy Rule 9023 and Rule 59(e) of the Federal Rules of Civil Procedure, the entry of an order (1) granting reconsideration, in part, of the Findings of Fact (Bankr. D.I. 1910; Adv. D.I. 135) (the “FOF”), the Opinion (Bankr. D.I. 1911; Adv. D.I. 136) (the “Opinion”) and the Order (Bankr. D.I. 1912; Adv. D.I. 137) (the “Order”), each entered by this Court on July 20, 2007, and (2) upon reconsideration, (a) vacating those portions of the Opinion and Order that authorized Fluor Enterprises, Inc. (“Fluor”) to recover pre-judgment interest in an amount to be determined, and (b) denying any award of interest for the period prior to the date that Fluor’s Claim becomes an Allowed Claim in accordance with the terms of the Amended Plan Of Liquidation of Orion Refining Corporation (Bankr. D.I. 1242).

2. Later on July 30, 2007, the ORC Representative filed notices of appeal (Adv. D.I. 139; Bankr. D.I. 1914) (the “Appeal Notices”) in the Adversary Proceeding and the Contested Matter from (a) the FOF, (b) the Opinion, (c) the Order and (d) Order Relating to Fluor Enterprises, Inc.’s Motion for Relief From Previously Entered Critical Fire and Trade

Vendor Orders (Bankr. D.I. 1811). The Appeal Notices were filed out of an abundance of caution to avoid a potential forfeiture of the ORC Representative's appeal rights in the unlikely event that the Reconsideration Motion were deemed not to be a motion of the type described in Bankruptcy Rule 8002(b).

3. Bankruptcy Rule 8002(b), in relevant part, provides: "If any party makes a timely motion of a type specified immediately below, the time for appeal for all parties runs from the entry of the order disposing of the last such motion outstanding. This provision applies to a timely motion . . . to alter or amend the judgment under Rule 9023" Fed. R. Bankr. P. 8002(b).

4. Bankruptcy Rule 8006 provides, in relevant part:

Within 10 days after filing the notice of appeal as provided by Rule 8001(a), entry of an order granting leave to appeal, or entry of an order disposing of the last timely motion outstanding of a type specified in Rule 8002(b), whichever is later, the appellant shall file with the clerk and service on the appellee a designation of the items to be included in the record on appeal and a statement of the issues to be presented.

Fed. R. Bankr. P. 8006 (emphasis added). See also Bankr. D. Del. L.R. 8006-1.

5. The ORC Representative believes that the Reconsideration Motion, which expressly invokes Bankruptcy Rule 9023, is a motion of the type specified in Bankruptcy Rule 8002(b). Cf. Osterneck v. Ernst & Whinney, 489 U.S. 169, 175 (1989) "[A] postjudgment motion for discretionary prejudgment interest constitutes a motion to alter or amend the judgment under Rule 59(e)."). Accordingly, the ORC Representative respectfully submits that the running of its deadline to file with the clerk and serve the Appeal Designations and Issues Statement on Fluor will not commence until, at the earliest, the entry of an order disposing of the Reconsideration Motion.

6. Based on the above understanding, the ORC Representative has not filed and served its Appeal Designations and Issues Statement at this time. If, however, it is determined by the appropriate Court that the filing and service of the ORC Representative's Appeal Designations and Issues Statement should not await disposition of the Reconsideration Motion, the ORC Representative is prepared to file and serve its Appeal Designations and Issues Statement promptly following such a determination.

Dated: August 9, 2007
Wilmington, Delaware

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Gregory W. Werkheiser

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